IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 529 of 2000

in

SPECIAL CIVIL APPLICATIONNo 3288 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HMMATBHAI JIVARAJBHAI KANADIA SHAH NIKETAN

Versus

DIST REGISTRAR COOPERATIVE SOCIETIES

Appearance:

MR KA PUJ for Appellants

Ms.Harsha Devani, ASSTT GOVERNMENT PLEADER for Respondent No. 1

MR SHIRISH JOSHI for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 11/06/2001

C.A.V. JUDGEMENT (Per : MR.JUSTICE RAVI R. TRIPATHI)

The present Letters Patent Appeal is filed by the appellant-- original petitioners being aggrieved of an order dated 11.7.2000 whereby the interim relief was declined while issuing 'Rule' in the main Special Civil Application. The learned Single Judge has observed that,

".. .. In the facts and circumstances of the case, there is no reason to stay the impugned order, which is in favour of respondent no.3, at the instance of the petitioners who are ex directors of the bank."

2. The Special Civil Application is filed by the present appellants-- original petitioners who are ex directors and present members/ shareholders of Shri Vardhaman Cooperative Bank Ltd., Bhavnagar. It is the case of the petitioners in the petition that respondent no.3, who was the Manager of the said Bank during his tenure as Manager between the period from 17.11.1995 to 29.2.1996 had made an unatuhroised investment of the Bank's moneys with three cooperative banks of Ahmedabad. it is also the case of the petitioners that pursuant to the decision taken at the Annual General Meeting held on 28.6.1987 for the aforesaid illegalities and irregularities, respondent no.3 was suspended from service. The decision dated 28./6.1987 was challenged by respondent no.3 by filing a Civil Suit No.996 of 1997 before the City Civil Court, Bhavnagar. The said suit was dismissed on the ground that the Civil Court has no jurisdiction. Thereafter, respondent no.3 filed Labour Case before the Labour Court, Bhavnagar, which is pending. It is also the case of the petitioners that the District Registrar, Cooperative Societies, Bhavnagar issued show cause notice dated 27.11.1997 on the members of the Board of Directors as well as respondent no.3 for the alleged violation of the provisions contained in sec.71(1) of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act" for brevity). It is also the case of the petitioners that after the members of the Board of Directors gave reply, respondent no.1, after considering the same passed an order under sec.76B of the Act on 2.5.1998. Thereafter, the Annual

General Meeting of the Bank held on 28.6.1998 approved the decision of respondent no.1. It is also the case of the petitioners that respondent no.1 then filed a criminal complaint being No.2339 of 1998 on 2.5.1998, against respondent no.3 in the Court of learned Chief Judicial Magistrate, Bhavnagar under secs.147(1)(g) and 148(1)(g) of the Act read with secs.409 and 421 of the Indian Penal Code. It is also mentioned in the petition that the Bank filed Arbitration Suit No.115 of 1999 for recovery of an amount of Rs.3,44,50,000/-, before the Board of Nominees, Ahmedabad, which is pending.

3. Respondent no.3, Manager being aggrieved of the order passed by respondent no.1 on 2.5.1998 challenged the same before the Labour Court, Bhavnagar, in the aforesaid Labour Case No.7 of 1998. In the background of the aforesaid facts, respondent no.2, Registrar of Cooperative Societies, Gujarat State exercising his powers under section 155 of the Act passed an order on 14.3.2000 reinstating respondent no.3 as Manager of the Bank. It is against this order that the Special Civil Application came to be filed which came to be admitted by the aforeaid order dated 11.7.2000 of the learned Single Judge. As the learned Single Judge while admitting the matter, declined to grant interim relief, the present Letters Patent Appeal is filed.

4. Learned advocate for the appellants-- original petitioners vehemently submitted that respondent no.2 had no reason to exercise powers under sec.155 of the Act and to disturb the order passed by respondent no.1. It is also submitted that respondent no.3 who is facing the charge under secs.147(1)(g) and 148(1)(g) of the Act read with secs.409 and 421 of the Indian Penal Code is not warranted to be reinstated as Manager of the Bank and that interim relief ought to have been granted as prayed for in the Special Civil Application.

5. Learned advocate Shri Shirish Joshi appearing for respondent no.3 submitted that the learned Single Judge had considered the aspect of locus standi of the appellants who were the directors of the Bank when the alleged illegalities and irregularities had taken place. Mr.Joshi, learned advocate pointed out that the amount which is alleged to have been invested in a Cooperative Bank of Ahmedabad was in fact as per the Resolution No.12 passed by the Board of Directors meeting held on 17.11.1995, a copy of which is produced at Annexure 1A and also pursuant to resolution No.13 of the same meeting, a copy of which is at Annexure 1B and also pursuant to resolution No.23 of the same meeting, a copy

of which is produced at Annexure 1C. Mr.Joshi, learned advocate has vehemently submitted that vide Resolution No.23 (supra), powers were given to the Chairman or Vice Chairman or Manager for the investment of the spare money of the Bank. Once power is already given to the Manager, there is no question of alleging that the Manager, i.e. respondent no.3 has exceeded his power of investing the spare money of the Bank in Cooperative Bank at Ahmedabad. He further submitted that once the Manager was having power to invest spare money of the Bank there cannot be any question of illegality or irregularity. In view of that learned Single Judge was right in declining the grant of interim relief at this stage. The Special Civil Application is yet to be heard and decided on merits.

6. In view of the aforesaid discussion, it cannot be said that the learned Single Judge has committed any error in not granting interim relief, more particularly when Resolution No.23 was approved in the meeting of Board of Directors held on 26.12.1995 that too unanimously, meaning thereby the present appellants-original petitioners are also party to the investment in question, which is alleged to be illegal or irregular, if it is ultimately held like that.

7. Hence the present Letters Patent Appeal is dismissed. However, we find that it is a case which requires an immediate hearing. The parties may complete the exchange of pleadings by 15th July 2001 and thereafter it will be open to the present appellants--original petitioners to move the concerned Bench taking up such matters to take up the main Special Civil Application for hearing in priority.

(M.R. Calla, J.)

(Ravi R. Tripathi, J.)

karim